

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTOPHER MATHIESON,

Plaintiff
v.

DOCKET NO.
1:07-cv-08527-LAK

JOHN C. DENIRO,

Defendant
_____ :

**DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO
FILE RESPONSE AND TO RESCHEDULE HEARING**

Defendant John C. DeNiro, by undersigned counsel, submits this motion under Rule 6 of the Federal Rules of Civil Procedure seeking a one week enlargement of time for defendant to file opposition papers and for an appropriate rescheduling of the hearing of the Order to Show Cause.

Plaintiff instituted this action by filing a Complaint on October 2, 2007, along with a Brief in Support and Declaration of plaintiff Christopher Mathieson. In conjunction with filing the Complaint, plaintiff brought a motion for a preliminary injunction by Order to Show Cause signed on October 2, 2007.

The Court has scheduled the hearing of the Order to Show Cause for October 17, 2007 and provided that defendant's opposition papers are to be filed and served by 4:00 P.M., October 12, 2007.

The case involves business dealings between the parties occurring over a five year period in which plaintiff Christopher Mathieson and defendant John C. DeNiro were members of a real estate firm operating under the name J. C. DeNiro & Associates, LLC. The Defendant John C. DeNiro held a 60% ownership interest in the company, the Plaintiff Christopher Mathieson held a 40% interest.

Mr. DeNiro, a resident of Florida, was served with the Complaint and related papers, as well as the Order to Show Cause, on October 4, 2007 while he was in New York City. Defense counsel has his office in Florida and was out of state in Colorado returning to his office on October 10, 2007. Counsel met with defendant in the afternoon of October 10, 2007 and at that time learned of the hearing date, and the date for submission of opposition papers.

Counsel has a scheduling conflict on October 17, 2007 as he is defense counsel in a lengthy class action certification hearing taking place on October 16-18, 2007, in Palm Beach County, Florida. This hearing has been scheduled for several months, includes four separate law firms and can't be adjourned. In addition, having received notice of the due date for opposition papers 48 hours before they must be filed does not allow sufficient time to adequately prepare opposition papers.

Defense counsel has contacted plaintiff's counsel in an effort to gain their consent to this brief enlargement of time, but they have declined to give consent.

Wherefore, it is respectfully requested that this court enlarge the time for defendant to file and serve opposition papers to the motion for a preliminary injunction for one week and to reschedule accordingly the date for the hearing on the motion.

Respectfully submitted,

ROBERT S. FRANKLIN, P.A.
Attorney for Defendant

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Dated: October 11, 2007

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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SERVICE LIST

CHRISTOPHER MATHIESON V. JOHN C. DENIRO
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UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

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